

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Per Martinsson, et al.
Serial No. : 10/608,630
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For : WEAR LEVEL INDICATING FILAMENTS AND
FABRICS (AND GUIDELINE APPLICATIONS)
Filing Date : June 27, 2003
Examiner : Andrew T. Piziali
Group Art Unit : 1794
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Claims 1, 3, 14, 15, 17, 28, and 48 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 4,093,512 to Fleischer (“Fleischer”) in view of U.S. Patent No. 3,800,019 to Parsey (“Parsey”) or U.S. Patent No. 6,653,943 to Lamb (“Lamb”). Claims 1, 3, 14-15, 17, 28 and 48 have been rejected under 35 U.S.C. §103(a) over Fleischer in view of “Applicant’s Disclosure” and Parsey or Lamb. For the reasons and facts amply given in the prior responses and the Declaration of Francis L. Davenport, Appellants respectfully request that the Panel consider the following arguments.

Independent claims 1 recites: “A papermaking fabric multilayer monofilament, said multilayer monofilament having a core and a sheath comprising a plurality of respective layers visibly distinguishable from one another and the core by their contrasting color, or reflectivity for indicating a level of wear of a papermaking fabric comprised thereof, wherein said multilayer monofilament is formed before being used in said papermaking fabric.”

(Emphasis added). Independent claims 15 and 48 recite: “one or more multilayer [mono]filaments each having a core [and a sheath] [comprising/comprised of a monofilament yarn surrounded by] a plurality of respective layers visibly distinguishable from one another and the core by their contrasting color, or reflectivity for indicating a level of wear, wherein said multilayer monofilament is formed before being used in said endless industrial fabric.”

As amply explained in the prior responses and evidenced by, among other things, the Declaration, neither Fleischer, Parsey, Lamb, nor the Applicants’ own disclosure, alone or in combination, disclose or render obvious the above-recited limitations of independent claims 1, 15 and 48. The Final Office Action of July 10, 2009 makes no new arguments, despite the Declaration submitted in this case prior to the Final Office Action. Moreover, throughout the “Response to Arguments” the Final Office Action repeatedly alleges that the following statements of fact attested to thereby are “unsupported argument”:

- That at present **no material exists in monofilament form** with the modulus specified that can be used in paper machine clothing that also has the other required characteristics.
- The only materials that exist are **multifilaments** such as the aramids Fleisher expressly teaches, **which is to be expected as they cannot be made into monofilament form.**
- That there is no such thing as a “wear detecting art.”

Emphasis added. First, the 1974 case that the Final Office Action cites for its allegation of “unsupported argument” is *In re Pearson*, 494 F.2d 1399, 1405, which stands for the proposition that **attorney argument**, is not a substitute for evidence in the record: “Attorney's argument in a brief cannot take the place of evidence.” *Id.* An Affidavit or Declaration under 37 CFR 1.132 presents evidence, and must be considered and addressed. See MPEP 2145. Thus the Office Action errs in ignoring the facts presented therein.

The Declaration comprises the statements of fact of an expert in the field to which this application pertains. Without repeating the entirety of the Declaration, which speaks for itself, unaddressed **facts** adduced include, but are not limited to:

- Because papermaking fabrics have a limited lifespan and require regular replacement, there needs to be a means to indicate the wear level in the fabric, so that the fabric can be replaced in time, avoiding any catastrophic failure and loss, damage or shutting down of the machines. Moreover, because these industrial fabrics have a width of from 5 to over 33 feet, a length of from 40 to over 400 feet and weigh from approximately 100 to over 3,000 pounds, replacement of these fabrics often involves taking the machine out of service, removing the worn fabric, setting up to install a fabric and installing the new fabric. And because these fabrics are typically made to order, it is important to know the condition of the fabric being currently used on the paper machine. Davenport Declaration, ¶12.
- Moreover, Fleischer's objective is to produce a papermakers' belt with ultra high modulus load bearing yarns such that the belt has improved stretch resistance. Fleischer attempts to achieve an improvement in tensile strength and stretch resistance of **forming fabrics woven from multifilaments** by employing high tenacity materials. *Fleischer*, col. 4 line 53- col. 5, line 6. Those of ordinary skill in the art, however, know that materials like Kevlar have very

poor abrasion resistance when used in papermaking fabrics, and therefore in order to survive, these materials **must be** wrapped and/or coated. Davenport Declaration, ¶16.

- One objective of the above-claimed invention, contrariwise, is to give the papermaker an idea of how and to what levels the wear or at what rate the wear is occurring **before catastrophic failure occurs. If the coating on the Kevlar yarn of Fleischer is gone, the fabric is in imminent failure mode, therefore providing for all or nothing.** Davenport Declaration, ¶17.
- Further, despite the fact that Fleischer states that its yarn can be of multifilament or monofilament form, an ordinarily skilled artisan would appreciate **that at present no such material exists in monofilament form with the modulus specified that can be used in paper machine clothing that also has the other required characteristics (flexibility, abrasion resistance etc).** The only materials that exist are multifilaments such as the aramids Fleisher expressly teaches, **which is to be expected as they cannot be made into monofilament form.** Quite simply, no such “Ultramono” exists for the claimed invention. And again, if Fleisher’s coating or wrapping wears away, the aramids have such poor abrasion resistance that **they will catastrophically fail.** Davenport Declaration, ¶¶18.

- Neither Parsey nor Lamb refer to nor even imply “a wear detecting art,” because there is no such thing. Davenport Declaration, ¶¶27.

Thus the Office Action’s dismissal of the statements of fact throughout the Declaration as “conclusions not based upon fact,” is in error. As MPEP 2145 states:

Office personnel should consider all rebuttal arguments and evidence presented by applicants. See, e.g., *Soni*, 54 F.3d at 750, 34 USPQ2d at 1687 (error not to consider evidence presented in the specification). C.f.,

In re Alton, 76 F.3d 1168, 37 USPQ2d 1578 (Fed. Cir. 1996) (error not to consider factual evidence submitted to counter a 35 U.S.C. 112 rejection);

In re Beattie, 974 F.2d 1309, 1313, 24 USPQ2d 1040, 1042-43 (Fed. Cir. 1992) (Office personnel should consider declarations from those skilled in the art praising the claimed invention and opining that the art teaches away from the invention.)

Finally, at page 7 the Office Action pinpoint cites Fleischer at col. 4, lns. 22-36 and Figure 7 for an individually resin-coated monofilament. However, the cited portion unequivocally says that Figure 7 shows, “***multifilament*** core yarns 16 which have been coated with ***a*** resin 18,” not a monofilament. And indeed, that is what Figure 7 shows. Thus it is not a “***multilayer monofilament*** [] formed before being used in said papermaking fabric.”

In view of the foregoing amendments and remarks, Appellants urge that the Office Action’s failure to consider the evidence is in error and all of the claims in this application are patentable over the prior art. Early and favorable consideration thereof is solicited.

Please charge any fees incurred by reason of this response and not paid herewith to
Deposit Account No. 50-0320

Respectfully submitted,

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